IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

STATE OF GEORGIA, BY ITS ATTORNEY-GENERAL,
Complainant,

vs.

TENNESSEE COPPER COMPANY, ET AL.,
Defendants

Original Cause
No. 1
In Equity

JOINT MOTION OF THE STATE OF GEORGIA AND TENNESSEE COPPER COMPANY TO ENTER AN ORDER OF DISMISSAL.

M. J. YEOMANS,
Attorney-General for the State of Georgia.

R. M. McCONNELL,
Attorney for Tennessee Copper Company.

PAT HARALSON,
WILLIAM BUTT,
THOMAS G. McCONNELL,
CHARLES M. SEYMOUR,
Of Counsel for
Tennessee Copper Company.

STUDLEY PRINTING CO. KNOXVILLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

STATE OF GEORGIA, BY ITS ATTORNEY-GENERAL, Complainant, vs. TENNESSEE COPPER COMPANY, ET AL., Defendants	Original Cause No. 1 In Equity

JOINT MOTION OF THE STATE OF GEORGIA AND TENNESSEE COPPER COMPANY TO ENTER AN ORDER OF DISMISSAL.

Now come the State of Georgia, by its Attorney-General, M. J. Yeomans, and the Tennessee Copper Company, by its Attorney, R. M. McConnell, and show to the Court that on the 15th day of December, 1937, the Governor of the State of Georgia approved a joint resolution of the General Assembly of that State in which its said Attorney-General is directed to join with the Attorney of the Tennessee Copper Company in having all former orders and decrees in this cause vacated and the cause dismissed and stricken from the docket of the Court, Tennessee Copper Company to pay all costs

in the cause which have been taxed against the State of Georgia or against it, a copy of which resolution is hereto attached as an exhibit and is made a part hereof, the contract embodied therein having been executed.

WHEREFORE the State of Georgia and the Tennessee Copper Company do now join in moving the Court that all former orders and decrees be vacated and that the cause be dismissed and stricken from the docket, and that the Court grant all appropriate orders in the premises as shall be necessary to carry said resolution into force and effect.

M. J. YEOMANS,
Attorney-General of the
State of Georgia.

R. M. McCONNELL,
Attorney for Tennessee
Copper Company.

A RESOLUTION

To authorize and direct the Governor of the State of Georgia to contract with Tennessee Copper Company in respect to the subject-matter of the litigation pending in the Supreme Court of the United States between the State of Georgia and Tennessee Copper Company and Ducktown Sulphur, Copper & Iron Company, Ltd., (which company was succeeded by Ducktown Chemical & Iron Company); to provide for the modification of the existing contracts between the State of Georgia and Tennessee Copper Company and Ducktown Chemical & Iron Company and the merging of them into one contract between the State of Georgia and Tennessee Copper Company, as the properties of Ducktown Chemical & Iron Company have been purchased by that Company; to provide for a system of arbitration for the settlement of damages which may be done by Tennessee Copper Company to the citizens of Georgia; and for other purposes.

WHEREAS, the State of Georgia has pending against Tennessee Copper Company and Ducktown Sulphur, Copper & Iron Company, Ltd., (which company was succeeded by Ducktown Chemical & Iron Company), in the Supreme Court of the United States an action for injunction and other relief which has been pending for a number of years, but the State of Georgia has found it more expedient and in the interest of its citizens to give these companies an opportunity to remedy the evils complained of and to adjust such damages as may be done to the citizens of this state through a system of arbitration, and in pursuance of this policy the Governor, at the direction of

the General Assembly, from time to time, has entered into contracts with these companies designed to the end just stated; and

WHEREAS, during the operation of these contracts the companies have relieved the conditions formerly existing and such damages as now occur are casual and easily to be compensated by the award of damages in individual cases; and

WHEREAS, these improvements and diminution of the damages have progressed to such an extent that the annual damage is now much less than the expenses of the Arbitration Board so that it is no longer necessary to expend the large sums of money hitherto spent in the maintenance of the arbitration as formerly maintained, but the same can now be operated effectively at much less expense; and

WHEREAS, the properties of Ducktown Chemical & Iron Company, including those in Polk County, Tennessee, were purchased by Tennessee Copper Company on August 31, 1936, and the plant of said Ducktown Chemical & Iron Company located at Isabella, Tennessee, is now being operated by Tennessee Copper Company and that company has continued to operate its plant at Copperhill, Tennessee, and Tennessee Copper Company assumed the obligations in the contract between this state and Ducktown Chemical & Iron Company and all of the expense of maintaining the arbitration system is being paid by Tennessee Copper Company, and that company is paying all of the awards made by the Arbitration Board, and it is advisable to now make one contract between this State and Tennessee Copper Company.

THEREFORE, BE IT RESOLVED by the General Assembly of Georgia (the Senate and the House of Representatives concurring) that the Governor be and he is hereby authorized and directed to enter into a new contract with Tennessee Copper Company, said contract to be substantially as follows:

"*THIS AGREEMENT,* between the *STATE OF GEORGIA,* through His Excellency, E. D. Rivers, Governor of the State of Georgia, herein called the *STATE,* and *TENNESSEE COPPER COMPANY,* a New Jersey corporation, its successors and assigns, herein called the *COMPANY;*

WITNESSETH:

THAT, WHEREAS, it is mutually agreed between the State and the Company as follows:

(1) The Company binds itself to maintain and operate its sulphuric acid plants and acid making appliances and processes in Polk County, Tennessee, which are located at Copperhill and Isabella, at the highest practical state of efficiency.

(2) The Company further agrees that from April 10th to October 1st of each year it will not permit the escape into the air of sulphur dioxide gases from its Copperhill plant which have a total sulphur content of more than eighty-eight (88) tons in any one day, and it will not permit the escape into the air of sulphur dioxide gases from its Isabella plant which have a total sulphur content of more than forty (40) tons in any one day.

(3) The Company shall make sworn reports to the Governor of the State as to the tonnage of green ore and concentrates smelted and converted, or otherwise treated, and the tonnage of acid made during the said period from April 10th to October 1st of each year at its said Copperhill and Isabella plants, a separate report to be made for each plant, such reports to be made at such intervals and in such form and manner as may be prescribed by the Governor of the State, with full right on the part of the State's Arbitrator, acting ex-officio as Inspector hereunder, to inspect the plants of the Company at such time or times between said dates of each year as to the Governor may seem advisable or necessary for his information as to such tonnage of ore and concentrates smelted and converted, or otherwise treated, during said period from year to year.

(4) The Company shall file with the Governor on April 10, 1938, (to cover the period from April 10, 1938 to April 10, 1939), a bond with some solvent surety company admitted to do business in the State as surety and payable to the Governor, and his successors in office, in the penal sum of Five Thousand Dollars ($5,000.00), conditioned for the payment of each and every award made within the limits and under the terms of this contract and each and every item of expense due to be paid by the Company as and when the same shall become payable under this contract; and on or before the 10th day of April of each and every year the Company shall file a new bond for each year; but the Company may aggregate a number of years together and file bond with the penalty as stated above, multiplied by the number of years it is intended to cover, instead of filing a

bond for each of said years. The contract year for the purpose of this contract shall run from April 10th to April 10th of each year, as stated above, the first bond of the Company to be filed under this contract to be for the period from April 10, 1938 to April 10, 1939. The Company has heretofore filed bonds which are now in effect and which cover the period from October 1, 1937 to October 1, 1938, and said bonds shall be considered as released and discharged when the bond is filed under this contract on April 10, 1938.

(5) The Company agrees to submit to a Board of Arbitration, to be constituted as hereinafter provided, the ascertainment and assessment of such damages as may be caused to the citizens of the State and their property by sulphur dioxide gases produced by its said plants at Copperhill and Isabella to an amount and extent not exceeding Five Thousand Dollars ($5,000.00) per annum; but there shall be reserved to all citizens of the State who do not submit their claims to such arbitration the right to sue upon or otherwise adjust their claims or demands against the Company accordingly as they might do if this contract were not made.

(6) The Board of Arbitration herein referred to shall be composed as follows: The Company shall appoint one Arbitrator, whose compensation and expenses shall be paid by it, to be known as the Company's Arbitrator. The Governor of the State shall appoint one Arbitrator, who shall be known as the State's Arbitrator. Unless the Arbitrator appointed by the Company shall be a citizen of one of the three counties of Fannin, Gilmer or Union, then the State's Arbitrator shall be a citizen of one of those counties and may be selected from one of those counties even though the

Company's Arbitrator also resides therein. The State's Arbitrator shall also be ex-officio an Inspector, as provided hereinabove. In the event the Arbitrator appointed by the Company and the State's Arbitrator are unable to agree in respect to any award or any matter affecting their duties under the contract, and only in the event of such disagreement, they shall agree and designate some disinterested person to act as Umpire in the matter as to which the two Arbitrators have so disagreed, and the decision of the majority of the Board as thus constituted shall constitute the action of the Board and be binding accordingly. The State's Arbitrator shall receive a salary not exceeding One Hundred Dollars ($100.00) a month for the period from April 10th to November 1st of each year and his necessary expenses to be audited and allowed by the Governor when he is actually engaged in the work, the same to cover his services as Arbitrator and Inspector. The Company may arrange to have the salary of the State's Arbitrator paid direct to him by it; however, all of the necessary expenses, both of the Company's Arbitrator and of the State's Arbitrator, while engaged in all of their duties in respect to this contract, shall be paid by the Company's Arbitrator, and the Company's Arbitrator shall keep separate account of the expenses of the State's Arbitrator and render bills in duplicate to the Company for same; and such sums so paid shall operate to discharge the liability of said Company to the same extent as if paid to the Governor and disbursed by him to the State's Arbitrator or as if paid to the Arbitrator upon order of the Governor; and the Company shall file with the Governor duplicates of the receipted expense bills and salary receipts of the State's Arbitrator for the funds so paid to him. The Umpire,

if and when appointed in accordance with the provisions of this contract, shall receive as compensation for his services an amount not exceeding Ten Dollars ($10.00) per day and his actual expenses while engaged in determining the matters as to which he is called in by the disagreement of the two arbitrators, the same to be audited and allowed by the Governor, but the same may be paid to the Umpire by the Company directly with duplicate receipts to the Governor in like manner as provided in the case of the payment for the services and expenses of the State's Arbitrator.

(7) The Company's Arbitrator and the State's Arbitrator shall make and formulate appropriate rules and regulations for the governing of the arbitration in accordance with this contract and file a copy thereof with the Governor.

(8) No citizen of the State having or claiming to have any right of action for damages on account of injury done by the Company shall be bound by the terms of this contract unless such citizen shall voluntarily submit his claim to arbitration under the rules and regulations referred to in the preceding paragraph of this contract, in which event he shall be bound by the award.

(9) Said Arbitrators shall personally investigate each claim submitted for arbitration hereunder by the citizens of the State for the damages to their crops or timber caused by sulphur dioxide fumes from the said plants of the Company, and shall appraise such damage, if any, and shall make an award in cash therefor, which award shall be paid upon warrant as may be prescribed in the rules and regulations referred to in the paragraph designated 8 hereof.

(10) In case of the death, resignation or removal by the Company of the Company's Arbitrator, it shall name another Arbitrator to take his place and perform the duties required of him under this contract, and shall notify the Governor of such change. If a vacancy shall occur as to the Arbitrator appointed under this contract on behalf of the State by reason of the death, resignation or inability of such State's Arbitrator to act, the vacancy shall be filled by the appointment by the Governor of another disinterested and competent person to fill the place and discharge the duties of State's Arbitrator and Inspector. The Governor shall at any time have the power to remove the State's Arbitrator and appoint a successor for cause.

(11) Whenever from time to time in the opinion of the Governor of the State there shall arise the necessity for the determination of the bona fide performance of this contract, then upon thirty (30) days written notice to the Company, addressed to it at 61 Broadway, New York City, the Company shall appoint one Arbitrator of its own selection, and the State by the Governor shall appoint the State Chemist of the State, or such other person as the Governor may deem proper, as Arbitrator for the State, and such two Arbitrators shall select some competent person as Umpire, which Board so created shall determine the question of the bona fide performance of this contract, and a majority finding of such Board on that question shall be final and binding upon the parties hereto.

(12) Nothing herein contained shall be construed as any admission by the Company that any damage is now being done or will hereafter be done to the property of the citizens of the State or to the State.

(13) It is the intention of the parties hereto to create and maintain a permanent arbitration system, and it is agreed that this contract shall continue in effect, unless terminated by the mutual agreement of the Company and the Governor, after the Governor has been authorized and directed by the Legislature of the State to do so, or terminated by the permanent cessation of operations of both of said plants of the Company, it being agreed and understood, however, that the temporary suspension of operations at either or both of said plants shall not terminate the contract.

(14) All expenses of every kind which may be incurred incident to the maintenance of the arbitration and the awards pursuant thereto are to be paid by the Company, it being agreed that the State shall not be required to pay any amount whatever.

(15) This contract is to be executed in duplicate and the original thereof is to be filed in the office of the Governor and the executed duplicate is to be delivered to the Company.

IN WITNESS WHEREOF, these presents have been signed by His Excellency, E. D. Rivers, Governor, in behalf of the State, and the Company has caused it to be executed by its authorized officers on this, the .....day of ....., A. D., 19....."

BE IT FURTHER RESOLVED, That upon such new contract being satisfactorily executed between the Governor on behalf of the State of Georgia and the said Tennessee Copper Company through its authorized officers, the Attorney-General of this State is directed to join with the attorneys representing said Company in

taking such steps in the Supreme Court of the United States as may be necessary in order to have the said suit styled State of Georgia by its Attorney-General vs. Tennessee Copper Company et al, being Original Cause No. 1 in Equity, dismissed and stricken from the docket of that Court, and all orders and decrees heretofore entered in said cause vacated, and the order in such appropriate form as may be approved by said Court shall recite that all costs in the cause which have been taxed against the State or said Tennessee Copper Company are to be paid by that Company.

BE IT FURTHER RESOLVED, that all laws and resolutions in conflict herewith be and the same are hereby repealed.